



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 18

In re application of

Dean Van Phan

Serial No. 09/100,624

Filed: June 19, 1998

For: APPARATUS FOR MAKING
STRUCTURED PAPER

DECISION ON
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO 37 CFR 1.181(a), filed May 28, 2002, in response to the Notice of Abandonment of May 7, 2002, which abandoned the application for failure to respond to "the Office letter mailed 06 August 2001". Petitioner asserts that there is no correspondence from the Office dated August 6, 2001, and that a proper response to the an Office action dated April 5, 2001 was in fact submitted on August 2, 2001.

DECISION

Since petitioner asserts that the papers were filed in a timely manner, the request is accepted as a petition under 37 C.F.R. 1.181 (no fee).

A review of the case reveals the following sequence of events. An Office action was mailed on April 5, 2001 (Paper No. 14). This action was a final rejection; see Box 2a on form PTO-326 and paragraph 5 of the action. Applicant filed a Notice of Appeal which was received by the Office on July 9, 2001. Thereafter, a telephone interview (undocumented by the examiner) apparently took place on July 9, 2001. On August 2, 2001, applicant filed an "Interview Summary" which reduced the applicant's oral arguments to writing. No further correspondence was submitted or mailed by either party until the Notice of Abandonment of May 7, 2002. The Notice stated that the application was "abandoned in view of applicant's failure to timely file a proper reply to the Office letter mailed on 06 August 2001." The instant petition was filed in response.

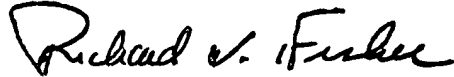
Being a final rejection, the reply to Paper No. 14 was limited to appeal or amendment as specified in 37 CFR 1.114 or 1.116. See 37 CFR 1.113. Note that the admission of, or refusal to admit, any amendment after final rejection will not operate to save the application from abandonment. See 37 CFR 1.135(b). Applicant satisfied this requirement by filing the Notice of Appeal on July 9, 2001. Having filed the requisite Notice of Appeal, applicant then had two months to file a brief (or a request for continued examination under 37 CFR 1.114) which time period could have been extended by up to an additional five months. See 37 CFR 1.192(a) and 1.191(d). Applicant did not do so. Instead applicant filed the above-noted "Interview Summary," apparently meant as a request for reconsideration, and took no further action thereafter. Such requests do not operate to stay the period for filing a brief and cannot serve to prevent abandonment. See 37 CFR 1.135(b).

The Notice of Abandonment of May 7, 2002 itself is inaccurate, in that no Office letter was ever mailed on August 6, 2001, and it is therefore vacated.

Nevertheless, the appeal in this application is dismissed because the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired. Because of the dismissal of the appeal, this application is abandoned because there are no allowed claims. See MPEP 1206, TIME FOR FILING AN APPEAL BRIEF.

Accordingly, this application stands abandoned.

The petition is DENIED.



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